

DENNIS HARRIS

IBLA 81-601

Decided June 25, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting oil and gas lease offers CA 4368 and CA 4369.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Acquired Land Leases -- Oil and Gas Leases: Consent Agency

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

APPEARANCES: Joe Ed. Buckner, Esq., Tulsa, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from the March 26, 1980, decision by the California State Office, Bureau of Land Management (BLM), which rejected two noncompetitive lease offers, CA 4368 and CA 4369. The offers were filed on May 31, 1977, for 4,131.99 acres of acquired land at the Pacific Missile Test Center, Point Mugu, California, under the jurisdiction of the Department of the Navy. The decision states:

The Department of the Navy has withheld its consent to the issuance of a lease. Under regulation 43 CFR 3109.3-1, oil and gas leases can only be issued for acquired lands with the consent of the agency with jurisdiction over the lands. Therefore, lease offers CA 4368 and CA 4369 are rejected.

Offers CA 4368 and CA 4369 were filed prior to the regulations published August 22, 1978 (43 Fed. Reg. 37202), and effective September 21, 1978 that authorized the Secretary to lease acquired military and naval lands under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351 et. seq. Therefore, the offers are subject to rejection under the following provisions of regulation 43 CFR 2091.1(e):

Except where regulations provide otherwise, all applications must be rejected and cannot be held pending possible future availability of the land interests in land, when approval of the application is prevented by . . . (e) the fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws. *

* Under a moratorium issued November 1, 1979, the Secretary of the Interior mandated this regulation requires rejection of all offers filed for acquired military or naval lands prior to September 21, 1978. In addition, the filing of new offers for such lands was suspended by the Secretary until further notice.

Therefore, offers CA 4368 and CA 4369 are also rejected because they were for acquired naval lands which were not available for leasing at the time the offers were filed. [Emphasis in original.]

On May 17, 1981, appellant filed a request for stay of proceeding of subject appeal because the issue of whether lease offers for acquired lands set apart for naval purposes filed prior to the effective date of the regulation implementing leasing of such land may be rejected as prematurely filed is currently before the United States Court of Appeals for the District of Columbia Circuit in the cases of Texas Oil and Gas Corporation, Appellant v. Cecil Andrus, Appellee, Civ. Nos. 80-2302 and 80-2297.

Because the leases could not issue without the consent of the Department of the Navy, that issue is not dispositive and we therefore deny the request to stay the proceedings.

BLM requested the Department of the Navy's consent to lease the lands for oil and gas development purposes. The Department of the Navy considered the lease offers and concluded:

The parcels in question have been developed to provide ordnance storage and handling facilities, ordnance launching facilities, and also a portion of the major

runway, 3-21. It is evident therefore, that outleasing for oil and gas exploration is not feasible, and that Navy consent to outlease must be withheld because of operational requirements.

Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), states in part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

[1] The effect of this statute is to preclude mineral leasing on acquired lands without the consent of the administrative agency having jurisdiction over the acquired land. Arthur E. Meinhart, 46 IBLA 27 (1980); Capitol Oil Corp., 33 IBLA 392 (1978); Charles F. Hajek, 29 IBLA 330 (1977). Thus, since the Department of the Navy has withheld its consent, this Department cannot issue oil and gas leases for the land and the lease applications were properly rejected. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

1/ In his request for stay, appellant refers to an attached copy of an expired Department of the Interior Instruction Memorandum No. 79-564 which would not apply to the facts herein even if operative.

